

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

Schools and Libraries Universal Service	)	CC Docket No. 02-6
Support Mechanism	)	
	)	
Proposed Revisions to FCC Forms	)	
472, 473, and 474	)	

**COMMENTS OF SBC COMMUNICATIONS INC.<sup>1</sup>**

**I. INTRODUCTION & SUMMARY.**

SBC has long shared the Commission's commitment to eliminate waste, fraud and other abuse in the Federal e-rate program. Where these problems have occurred, they have weakened public confidence in the program and threatened to undermine the significant public interest benefits of that program. SBC therefore has supported Commission efforts to ensure the integrity of the e-rate program, and believes that incorporating clear and concise certifications on e-rate forms can play an important role in curtailing abuses. Among other things, certifications remind program participants of their obligations under the program, and put them on notice that failure to comply can result in a loss of funding, enforcement action, or even prosecution. Certifications thus encourage program participants to know and understand the e-rate rules, and to comply with those rules.

Because of the importance of certifications as an educational tool and compliance mechanism, SBC believes the Commission is right to examine the e-rate forms and make appropriate revisions to better reflect program requirements. Consequently, SBC and other service providers generally have supported the Commission's proposal to revise FCC Forms 472,

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<sup>1</sup> SBC Communications Inc. files these comments on behalf of itself and its operating company affiliates (collectively, "SBC") in response to the Commission's December 23, 2003, Second Further Notice of Proposed Rulemaking in the above-captioned docket. *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, (rel. Dec. 23, 2003) (*Second FNPRM*). Those affiliates are: Southwestern Bell Telephone Company LP; Nevada Bell Telephone Company; Pacific Bell Telephone Company; Illinois Bell Telephone Company; Indiana Bell Telephone Company; Michigan Bell Telephone Company; The Ohio Bell Telephone Company; Wisconsin Bell Telephone Company; and the Southern New England Telephone Company; Data comm.; and LD, etc.

473 and 474, and have actively engaged in discussions with Commission staff about their proposed revisions. While those discussions generally have been productive, and have resulted in improvements to the proposed forms, additional changes are necessary. In particular, the draft forms should be modified to better reflect service providers' obligations under the existing e-rate rules – in several instances, as discussed below, the proposed certifications go beyond the requirements of the existing rules. Though certifications plainly are an important program control mechanism, they cannot be used to impose new, substantive requirements on service providers that are not included in the existing rules.

In some cases, the draft certifications also would require significant and costly modifications to SBC's and other service providers' systems and business processes with little, if any offsetting benefit to the program. For example, the proposed revisions to the certifications on the BEAR form (Form 472) would require SBC's invoicing and billing personnel to make representations about matters that are outside their area of responsibility (such as regarding the integrity of the bidding process). While SBC does not object to making certifications regarding its participation in the bidding process (so long as those certifications pertain to SBC's actions or matters about which it reasonably could be expected to have some knowledge), such certifications should not be included on billing or invoicing forms. Like many service providers, SBC utilizes personnel from multiple business units or departments, which may have little, if any, interaction with other departments, to perform specific functions on e-rate projects. As a consequence, personnel in SBC's billing and invoicing department, which are responsible for generating e-rate invoices, have no knowledge of the competitive bidding process, and cannot make any certification regarding the conduct of any particular bid. Accordingly, certifications regarding the bidding process should only be included on the Service Provider Annual Certification (SPAC), which under these proposed revisions covers the entire enterprise, and thus will require interdepartmental coordination and accountability.

SBC's specific comments with respect to particular proposed revisions to Forms 472, 473 and 474 are set forth below.

## **II. FORM 472 – BILLED ENTITY APPLICANT REIMBURSEMENT (BEAR) FORM.**

The BEAR form (FCC Form 472) is used by applicants to obtain reimbursement for discounts on approved services for which the applicant already has paid the service provider in full. In this scenario, the applicant is solely responsible for determining which services are eligible for discounts and covered by its funding commitment, and thus which services to include on its request for reimbursement. The applicant also is responsible for filling out all of the substantive portions of the form. The service provider is responsible for signing the form and making certain certifications relating to its substantive obligations under the e-rate rules – including its obligation to remit reimbursed funds to the applicant within 20 days of receiving payment from USAC.

SBC believes that three of the certifications in the revised BEAR form, Certifications E, F, and D, should be revised, eliminated and/or moved to the SPAC form. As proposed, these certifications are overly broad, inappropriate, unnecessarily duplicative, and/or potentially confusing.

### **A. Certification E.**

Proposed certification E requires a service provider to acknowledge that persons who have been convicted of criminal violations or held civilly liable for certain acts arising from their participation in the e-rate program are subject to suspension or debarment, and to certify that the service provider will institute measures to be informed, and will notify USAC if it learns that it or the applicant – or any person associated with the service provider or applicant – is convicted or held civilly liable for such acts. Only the first part of this certification (that is, the acknowledgement that one may be debarred or suspended from the e-rate program if convicted or held liable for certain acts) is appropriate. The rest of it imposes obligations that go beyond the requirements of the e-rate rules and improperly shifts e-rate oversight responsibilities to service providers, and which, in any event, are unreasonably burdensome.

As an initial matter, nothing in the Commission's rules and orders require a service provider to institute measures to stay informed about whether an applicant or any other person

that is not an employee or agent of the service provider has been convicted or held civilly liable for violations of the e-rate rules. Nor is there anything in the rules that requires a service provider to inform on itself, much less that it become an informant about others. Insofar as the Commission has not adopted such obligations pursuant to appropriate rulemaking procedures, assuming it could impose such obligations (which is by no means clear), the Bureau plainly cannot impose them by revising the e-rate forms.

Even if the Bureau had such authority, imposing these obligations would improperly shift e-rate oversight responsibilities to service providers. While SBC has no interest in doing business with applicants or other service providers that ought to be suspended or debarred from participating in the program due to misconduct, it should not be SBC's or other service providers' responsibility to investigate other service providers or applicants to determine whether they have been held civilly liable to convicted of violations of the e-rate rules. That is the responsibility of USAC, the Commission and other federal agencies.

In any event, even if it were appropriate to require a service provider to report cases of criminal convictions or holdings of civil liability of which the service provider is aware, the Bureau's proposal unreasonably would require service providers affirmatively to investigate whether their customers or any person "*associated in any way*" with their customers or the service provider has been convicted or held liable of violations of the e-rate rules. Such a requirement would force service providers to expend significant resources to investigate the legal records of a broad and indeterminate range of entities and individuals. Given the expansive, vague language of the proposed certification, a service provider could be responsible for investigating individual schools and libraries, school districts, statewide library systems, statewide consortia, as well as hundreds or thousands of individual employees of such entities, not to mention any other entity involved in the e-rate program – as well as its employees. Indeed, there is virtually no end to the number of entities and individuals covered by the terms of the certification. Plainly, a service provider cannot and should not be responsible for investigating all of these entities and individuals. And, imposing such an obligation will only

discourage service providers from participating in the program lest they be found liable for not meeting an obligation that cannot reasonably be met in the first place.

The Bureau's proposed certification not only is inappropriate and overly burdensome, it also is unnecessary because USAC and the Commission are likely to know (or be in the best position to learn) of any criminal conviction or finding of civil liability arising out of the e-rate program. Indeed, USAC and the Commission are the entities most likely to investigate any violation of the rules, and to refer any such violation to the Justice Department. As such, they are likely to be intimately aware of any such criminal convictions or findings of civil liability. Consequently, the proposed certification is superfluous.

Finally, to the extent any such a certification is appropriate, it should not be included on FCC Form 472 because service provider invoicing and billing personnel are unlikely to have access to the information necessary to complete such a certification. Rather, it should be included only on the Service Provider Annual Certification (SPAC) Form 473. And, for the reasons discussed above, any such certification should be limited, at most, to an acknowledgment that violation of the e-rate rules may result in suspension or debarment, and that the service provider (and its employees) have not been convicted of or found civilly liable for a violation of the e-rate rules.

**B. Certification F.**

Proposed certification F would require a service provider to certify that it will retain all documents necessary to demonstrate compliance with the statutes and FCC rules, as well as documents relating to the bidding process and the delivery of services received by the applicant for a period of five years. SBC generally supports adoption of this certification because it will remind service providers of their obligations under the rules, but believes it should not be incorporated into the BEAR form. Rather, it should be incorporated into the SPAC Form 473. The reason is that billing and invoicing personnel have no involvement in the bidding and service delivery processes, and therefore have no knowledge of or responsibility for retaining documents relating to those processes. If they nonetheless are required to make certifications

regarding these processes, SBC will be forced to adopt additional procedures to ensure that personnel making such certifications are informed regarding document retention by other departments, increasing the cost of providing e-rate services – which ultimately will be passed on to e-rate customers.

Imposing these additional burdens and costs are unnecessary and duplicative. The Bureau has proposed to include the very same certification on the SPAC Form 473. Including the certification on that form will be far less burdensome and costly than including it on the BEAR form, and will achieve the Commission’s objective of reminding service providers of their document retention obligations.

#### **D. Certification D.**

SBC generally supports the substance of certification D, but believes that the instructions for that certification should be revised to eliminate any confusion regarding the scope of a service provider’s obligations. Proposed certification D requires a service provider to certify that it has “received funds from [its] customer greater or equal to the amount requested in Column 14.” In contrast, the instructions state that a service provider must “[c]heck this box to certify that your company has received the total (undiscounted) amount indicated in Column 14 from the billed entity.” To eliminate any confusion the instructions or the certification should be revised to use the same language as the certification itself.

### **III. FORM 473 – SERVICE PROVIDER ANNUAL CERTIFICATION (SPAC).**

The SPAC form (Form 473) is filed annually by service providers to attest that they will comply with the Commission’s e-rate rules. SBC generally supports the proposed certifications on the SPAC form because they will encourage compliance with the e-rate rules by reminding service providers of their obligations under the program, and putting them on notice that failure to comply can result in a loss of funding, enforcement action, or even prosecution. However, SBC believes that proposed certifications 9, 15, and 17 should be revised to better reflect the requirements of the rules, and eliminate ambiguities and overly broad and inappropriate requirements.

**A. Certification 9.**

Certification 9 requires service providers to attest that they are “fully familiar with the terms, conditions, and purposes of the Schools and Libraries Universal [Service] Support Mechanism.”<sup>2</sup> This certification is unnecessarily vague and ambiguous, and (read literally) overly broad. SBC has no idea what is meant by the phrase “terms, conditions, and purposes.” Service providers’ rights and obligations under the program are spelled out in the statute and the Commission’s rules, which establish the substantive requirements of the program with which service providers must comply. To the extent the Bureau intends to require service providers to certify that they are familiar with other requirements, it should identify those requirements and their sources. But if the Bureau simply intends the phrase “terms, conditions, and purposes” to mean the Commission’s e-rate rules, it should revise the certification to refer only to those rules. Specifically, SBC recommends that the Commission revise the certification to read: “The service provider listed is fully familiar with the *rules governing* the Schools and Libraries Universal Service Support Mechanism (hereinafter ‘program’).”

**B. Certification 15.**

Proposed certification 15 is identical to proposed certification E to the BEAR form (Form 472). For the reasons discussed above, only the first part of this certification (that is, the acknowledgement that one may be debarred or suspended from the e-rate program if convicted or held liable for certain acts) is appropriate. The rest of the certification imposes obligations that go beyond the requirements of the e-rate rules, improperly shift e-rate oversight responsibilities to service providers, and are unreasonably burdensome. Accordingly, as discussed above, proposed certification 15 should be revised to limit it, at most, to an acknowledgment that violation of the e-rate rules may result in suspension or debarment, and

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<sup>2</sup> SBC believes that the Bureau unintentionally left out the word “service” in the certification, and recommends its inclusion.

that the service provider (and its employees) have not been convicted of or found civilly liable for a violation of the e-rate rules.

**C. Certification 17.**

Proposed certification 17 would require a service provider to attest that the rates charged for e-rate services are its lowest and are competitive with rates generally paid for similar services and equipment in the local community. The proposed certification goes beyond the requirements of the Commission's rules, which require that a service provider charge the "lowest corresponding price" for supported services, which the Commission has defined as "the lowest price [] charged to similarly situated non-residential customers for similar services."<sup>3</sup> In addition, by requiring a service provider to attest that its rates are competitive, proposed certification 17 requires service providers to facts that are not necessarily in their possession – short of colluding with competitors, a service provider will not necessarily know whether its rates for specific services or equipment are competitive with other providers' rates. Consequently, the Commission should revise proposed certification 17 to conform to the requirements of the e-rate rules. Specifically, it should revise that certification to read: "I certify that the rates charged by the service provider listed on this Form 473 for goods and services provided pursuant to the program comply with the requirements of section 54.511(b) of the Commission's rules, 47 C.F.R. § 54.511(b)."

**IV. FORM 474 – SERVICE PROVIDER INVOICE FORM.**

The Service Provider Invoice Form (SPIF), FCC Form 474, is used by service providers to submit invoices to SLD for reimbursement of discounts already provided to e-rate customers. In the notice, the Bureau proposes modifications to the SPIF that could significantly change the data to be reported in columns 11 and 12 of the form, forcing carriers to expend enormous resources to modify their billing and invoicing systems to bond electronically with the SLD.

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<sup>3</sup> 47 C.F.R. § 54.511(b); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Report and Order*, 12 FCC Rcd 8776 at para. 484 (1997).



Based on discussions with Commission staff, SBC believes that these changes were not intended. In any event, the changes proposed would fail to provide the data needed to properly process e-rate invoices. Accordingly, the Bureau should not adopt the proposed modifications to columns 11 and 12 of the SPIF.

Although not entirely clear, the new SPIF proposed by the Bureau apparently would modify the data to be submitted in columns 11 and 12 of the existing form. In particular, the new form appears to make two changes to column 11. First, rather than being used to report the date of the customer bill associated with the discounts included on the invoice being submitted for reimbursement, column 11 apparently would be used to report the date of the first bill issued during the funding year.<sup>4</sup> Second, rather than being used to report recurring and non-recurring charges for services billed as part of a recurring, regular cycle,<sup>5</sup> column 11 apparently would be used only to report recurring charges – not non-recurring charges for regularly billed services.<sup>6</sup>

Likewise, the new form appears to alter the data reported in column 12. Specifically, rather than being used only for bills for services or products and services delivered on a one-time

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<sup>4</sup> Column 11 of the existing SPIF is used to report the “Customer Billed Date (mm/dd/yy),” which is the “month and year of bill submitted by the service provider to its customer and upon which [the SPIF] is based.” FCC Form 474 (Oct. 2001); FCC Form 474 Instructions (Oct. 2001). In contrast, column 11 of the new form would require a service provider to report “Recurring Services: First month of the reimbursement period covered by each line (mm/yyyy).” Proposed FCC Form 474 (Jul. 2005); Proposed FCC Form 474 Instructions (Jul. 2005). The instructions to the new form further state that the entry in column 11 should be “the first month and year of the bill that [the service provider] issued for the period covered by this line on or after the Service Start Date.” *Id.*

<sup>5</sup> The instructions to the existing form state that column 11 should be used for services billed as part of a recurring, regular cycle, and may include both recurring and non-recurring charges for such services. FCC Form 474 Instructions (Oct. 2001).

<sup>6</sup> The instructions to the proposed form state only that service providers should complete column 11 for recurring services on a monthly or other-than-monthly basis. Proposed FCC Form 474 Instructions (Jul. 2005).

non-recurring basis,<sup>7</sup> column 12 of the new form could be read to apply to all non-recurring charges – including non-recurring charges for regularly billed services.<sup>8</sup>

Based on discussions with the SLD, SBC understands that Commission staff did not intend the new, revised SPIF to change the data reported in columns 11 and 12 of FCC Form 474. Rather, the staff intended only to provide some additional clarity concerning what should be reported. However, the new form, as currently drafted, could be read to alter substantially the data reported in columns 11 and 12. Any such change would force carriers like SBC, which has expended enormous time and resources to develop electronic systems capable of bonding directly with the SLD to efficiently and accurately transmit e-rate invoices and billing information, to devote additional resources to modify their systems to be compatible with the new form.

To the extent the Bureau intended service providers to submit different data in columns 11 and 12 of FCC Form 474, it is by no means clear that the new data will facilitate processing of e-rate invoices. Indeed, the proposed change to column 11 could be read to require service providers to report the date of the first bill for services rendered during the funding year, rather than the date of the first customer bill on which e-rate discounts appear. These dates may be different because service providers often cannot include e-rate discounts in the first bill for recurring services of the funding year (if, for example, SLD fails to issue a commitment letter prior to the start of the funding year, the first bill will not include any e-rate discount). Accordingly, the Commission should not adopt the proposed changes to columns 11 and 12 of the SPIF, or, at a minimum, revise the headings and instructions to those columns to make clear that the data to be reported is the same as that reported on the existing form.

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<sup>7</sup> FCC Form 474 Instructions (Oct. 2001).

<sup>8</sup> Proposed FCC Form 474 Instructions (Jul. 2005).

**V. CONCLUSION.**

SBC respectfully recommends that the Commission modify the proposed FCC Forms 472, 473, and 474 consistent with the views expressed herein.

Respectfully Submitted,

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